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SUPREME COURT, U.S.

No. 517

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

SAVE WAY NORTHERN BLVD. INC.,

Appellant,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

STATEMENT AS TO JURISDICTION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

SAVE WAY NORTHERN BLVD. INC.,

Appellant,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Appellee.

STATEMENT AS TO JURISDICTION

Appellant appeals from the final order of the Court of Appeals of the State of New York (Appendix D annexed hereto) entered in this proceeding on June 9, 1961 affirming the order and judgment of the Court of Special Sessions of the City of New York, Appellate Part for the Second Judicial Department entered on March 10, 1961 which affirmed the judgment of the Magistrates Court of the City of New York convicting appellant of a violation of Section B 36-103.0 of the Administrative Code of the City of New York for displaying at its gasoline station signs bearing its trade and brand name, SAVE WAY upon a finding that this name refers to price and thereby violates the ordinance.

Appellant submits this Statement to show that this Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinions Below

The decision and sentence of the New York City Magistrate and the memorandum opinion of the Court of Special Sessions, Appellate Part, affirming the judgment of conviction are not reported. A copy of the former is attached hereto as Appendix A. A copy of the latter is attached hereto as Appendix B.

No opinion was rendered by the Court of Appeals in affirming the conviction except the memorandum appearing in 10 N.Y. 2d 727, a copy of which is annexed as Appendix C. As appears from said memorandum, Judge Stanley H. Fuld dissented upon the ground that

> ". . . the defendant's signs, bearing the trade name 'Save Way', do not state or refer directly or indirectly to price within the sense or meaning of the Administrative Code provisions upon which the prosecution and conviction are based." 10 N.Y. 2d 727 at page 728.

The memorandum opinion of the Court of Appeals granting appellant's application for an order amending that Court's remittitur so as to indicate that the constitutional issues presented herein were considered and passed upon in the State Court, is reported at 10 N.Y. 2d 748 and is set forth at page 7 *infra*.

Jurisdiction

The judgment of the Court of Appeals in this proceeding was entered on June 9, 1961. The notice of appeal was filed with the Clerk of the Court of Special Sessions of the City of New York (the court possessed of the record) on August 29, 1961. The jurisdiction of this Court on

this appeal is conferred by Title 28 United States Code Sections 1257 (2) and 2101 (c).

The following decisions, among others, are believed to sustain the jurisdiction of this Court to review the order and judgment herein on direct appeal: *De Veau* v. *Braisted*, 363 U.S. 144, 146 (1960); *Smith* v. *California*, 361 U.S. 147, 149 (1959); *Independent Warehouses, Inc.* v. *Scheele*, 331 U.S. 70, 79 (1947); *Dahnke-Walker Co.* v. *Bondurant*, 257 U.S. 282, 289 (1921); *Western Turf Association* v. *Greenberg*, 204 U.S. 359, 362 (1907).

Questions Presented

Whether Section B 36-103.0 of the Administrative Code of the City of New York as applied in this case violates the Due Process and Equal Protection clauses of the United States Constitution (14th Amendment, §1) in that:

(a) The ordinance, as applied below, making it a crime for appellant to place its trade and brand name SAVE WAY on appropriately placed signs, has no relationship to the prevention of fraud, the mischief the ordinance was designed to cure, and constitutes an unnecessary and oppressive restriction upon a lawful business, bearing no reasonable relation whatsoever to public peace, health, morals, welfare or safety.

(b) Statutory restrictions on the size and location of price signs at gasoline stations is, as found by a number of the state courts, arbitrary and oppressive, has no relation to any proper legislative objective, has the effect of reducing competition and discriminates against independent gasoline station dealers.

The Ordinance Involved

The provisions of Section B 36-103.0 of the Administrative Code of the City of New York here pertinent are as follows:

"B36-103.0 Placards to be posted.—a. It shall be unlawful for any person, firm or corporation to sell or offer for sale at retail for use in internal combustion engines in motor vehicles any gasoline unless such seller shall post and keep continuously posted on the individual pump or other dispensing device from which such gasoline is sold or offered for sale a sign or placard not less than seven inches in height and eight inches in width nor larger than twelve inches in height and twelve inches in width and stating clearly and legibly in numbers of uniform size the selling price or prices per gallon of such gasoline so sold or offered for sale from such pump or other dispensing device together with the name, trade name, brand, mark or symbol, and grade or quality classification, if any, of such gasoline.

"b. The amount of governmental tax to be collected in connection with the sale of such gasoline shall be stated on such sign or placard and separately and apart from such selling price or prices.

"c. No sign or placard stating or referring directly or indirectly to the price or prices of gasoline other than such signs or placards as hereinabove provided shall be posted or maintained on, at, near or about the premises on which gasoline is sold or offered for sale." *

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* Section B36-103.0 was enacted on July 15, 1941 as Local Law No. 56 of the City of New York. Its predecessor §B36-101.0, Local Law No. 141 of 1939, read in part:

"b. No sign or placard stating the price or prices of gasoline other than such signs or placards as hereinabove provided

Statement

(a) Appellant's Business—The Save Way Chain of Stations

Appellant operates a gasoline station in the County of Queens, City and State of New York. Since the opening of the station in June 1955, it has displayed on its premises large and attractive signs, costing over $13,000, bearing its trade and brand name Save Way (fols. 57, 88-89).

This is one of seventeen Save Way stations, an independent chain, selling Save Way gasoline purchased from an independent New Jersey refinery (fols. 87, 92, 116-117). They do not sell nationally advertised products of major oil companies.

These Save Way Service Stations are located in New York, Pennsylvania, New Jersey, Connecticut, Delaware and Maryland; four of them in New York State, two in New York City (fol. 88).

(b) The Proceedings Below

This proceeding, instigated by a nearby competitor* selling a nationally advertised brand of gasoline, culminated in appellant's conviction by a New York City Magistrate who imposed a $100 fine (fols. 25-26, 77-83). The Magistrate's determination was affirmed by order of the Court of Special Sessions, Appellate Part (fols. 199-204). The New York Court of Appeals likewise affirmed the conviction, Judge Fuld dissenting.

If this determination remains undisturbed, appellant will be unable to use its trade and brand name on the af-

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shall be posted or maintained on the premises on which said gasoline is sold or offered for sale."

* The summons herein was served following the institution of a mandamus action against the Mayor and other New York City officials (fols. 77-83).

fected station or others in New York City without facing repeated prosecutions and convictions.

(c) Manner, Method and Time of Raising the Federal Question Sought to Be Reviewed

The Federal questions sought to be reviewed on this appeal were raised by appellant at every stage of the proceedings and in each of the state courts below (e.g., fols. 7, 95-96).

Appellant repeatedly called attention to the many cases in other states in which similar statutes have been struck down as an arbitrary and unreasonable exercise of the police power, violative of both the State and Federal Constitutions. In its brief in the New York Court of Appeals appellant urged that a review of the decision in *People* v. *Arlen Service Stations, Inc.*, 284 N.Y. 340 (1940), which upheld the forerunner of the present ordinance, would be warranted

> "in light of the numerous recent cases in other jurisdictions holding similar ordinances unconstitutional."

In addition, appellant has maintained in each of the Courts below that even if the ordinance as written were constitutional, to include within its proscription the Save Way signs here in issue constitutes an unconstitutional deprivation of appellant's valuable property rights in its name and good will. The only possible justification for the ordinance and that specified in the *Arlen* case, is to protect the public from fraud in the sale of gasoline, a purpose that can hardly be served by preventing the use of appellant's trade and brand name.

By order dated July 7, 1961, the New York Court of Appeals granted an amendment of its remittitur by adding thereto the following:

"Upon the appeal herein there was presented, and necessarily passed upon, a question under the Constitution of the United States, viz.: whether Section B 36-103.0 of the Administrative Code of the City of New York as applied to appellant in this case effects a deprivation of due process and equal protection, in violation of the Fourteenth Amendment of the Constitution of the United States. The Court of Appeals held that appellant's constitutional rights were not violated."

The Questions Are Substantial

The validity and scope of the ordinance involved in this proceeding, and of similar ordinances and statutes, is a matter of serious concern not only to appellant, and the SAVE WAY chain of service stations but to all independent gasoline station dealers who cannot rely on the selling power of nationally advertised brands as do their competitors. These dealers are particularly dependent upon the use of appropriately placed signs, including price signs, as their principal means of communicating with the purchasing public.

Independent dealers have time and again urged, as does the appellant here, that restrictions as to the size and placement of price signs are arbitrary and oppressive, serving no public interest, but rather the monopolistic interests of the large gasoline companies. An investigation of wholesale gasoline prices in the New York Metropolitan Area was recently undertaken by the Antitrust Division of the Department of Justice.*

* Articles concerning this investigation appeared in the NEW YORK HERALD TRIBUNE and the NEW YORK TIMES of October 17, 1961. The investigation interestingly enough deals with the differences in both wholesale and retail prices of gasoline in New York City—which makes it a crime to refer to price on gasoline station signs—and Nassau County which has no such statute.

I

Most state courts have held similar statutes and ordinances unconstitutional.

The question of the constitutionality of statutes and ordinances prohibiting the display of gasoline price signs except those of limited size on pumps—invisible from the roadway—has been the subject of much litigation in the state courts. While such legislation has been held invalid on both federal and state constitutional grounds in a clear majority of cases, the results have by no means been uniform.

Constitutional infirmities were found by nine states—Connecticut, Florida, Louisiana, Maine, Michigan, Nevada, Ohio, Pennsylvania and Rhode Island.* In each instance a violation of the due process clause of the United States Constitution was urged and expressly or by implication held to be present.

Similar statutes and ordinances have been upheld in three states—Iowa, Massachusetts and New York.** How-

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* *State* v. *Miller*, 126 Conn. 373, 12 A.2d 192 (1940); *Town of Miami Springs* v. *Scoville*, 81 So.2d 188 (Fla. 1955); *State* v. *Blackburn*, 104 So.2d 19 (Fla. 1958); *City of Lake Charles* v. *Hasha*, 238 La. 635, 116 So.2d 277 (1959); *Sears, Roebuck and Company* v. *City of New Orleans*, 238 La. 935, 117 So.2d 64 (1960); *State* v. *Union Oil Co. of Maine*, 151 Me. 438, 120 A.2d 708 (1956); *Levy* v. *City of Pontiac*, 331 Mich. 100, 49 N.W.2d 80 (1951); *State* v. *Redman Petroleum Corp.*, 360 P.2d 842 (Nev. 1961); *Moreson* v. *City of Akron*, 20 Ohio Opinions 298 (Summit Co. C. P. 1941); *Gambone* v. *Commonwealth*, 375 Pa. 547, 101 A.2d 634 (1954); *State* v. *Guyette*, 81 R.I. 281, 102 A.2d 446 (1954).

** *State* v. *Woitha*, 227 Iowa 1, 287 N.W. 99 (1939); *Merit Oil Co.* v. *Director of Division on Necessaries of Life*, 319 Mass. 301, 65 N.E.2d 529 (1946); *People* v. *Arlen Service Stations, Inc.*, 284 N.Y. 340 (1940). A case erroneously cited by respondent below as supporting its position is *Serve Yourself Gasoline Stations Ass'n* v. *Brock*, 39 Cal.2d 813, 249 P.2d 545 (1952), appeal dismissed 345 U.S. 980 (1953). The statute there involved contains

ever, in the recent case of *Sun Oil Co.* v. *Director of Division on Necessaries of Life*, 163 N.E. 2d 276 (Mass. 1960), the Supreme Judicial Court of Massachusetts held that its statute did not prevent the use of words which promised thrift in the purchase of gasoline through the use of the words "thrift", "thrifty", and "thriftier".

In one state—Delaware—a limitation on the size of price signs was struck down as violative of the Fourteenth Amendment though the restriction of such signs to pumps was upheld.* A similar New Jersey statute was originally held to be unconstitutional.** However, dictum in a recent decision by the New Jersey Supreme Court now places the New Jersey position in doubt.†

The impact of conflicting state determinations upon the business of independent gasoline station chains having service stations in several states, is illustrated by the dilemma in which the SAVE WAY chain now finds itself. In Pennsylvania and Connecticut SAVE WAY dealers can freely display their trade and brand name on signs. A similar display in New York City has resulted in criminal prosecution. In New Jersey the issue is in doubt and in Delaware SAVE WAY dealers may some day have to place all of their signs, large and small alike, on pumps.

Only a determination by this Court can resolve the conflict between the states as to the constitutionality of these statutes and ordinances.

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restrictions against the use of the word "save" unless the actual price of gasoline is indicated in numbers of equal size. The California Supreme Court in the *Brock* case upheld the constitutionality of its statute expressly distinguishing it from those similar to the ordinance here at issue where " . . . the right to maintain signs of a sufficient size to be read by a passing motorist was prohibited."

* *State* v. *Hobson*, 46 Del. 381, 83 A.2d 846 (1951).

** *Regal Oil Co.* v. *State*, 123 N.J.L. 456, 10 A.2d 495 (1939).

† *Fried* v. *Kervick*, 34 N.J. 68, 167 A.2d 380 (1961).

II

These ordinances bear no relationship to the public health, welfare and safety.

While this Court has expressed its reluctance to use the due process clause of the Fourteenth Amendment to strike down state regulatory laws "where there are reasonable bases for legislative action" * and has held that private rights "must yield to a proper exercise of the police power";** the Court has also emphasized that the police power "must be exercised for an end which is in fact public and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive." †

The ordinance here at issue serves no public purpose; it is arbitrary and oppressive; and even if there were justification for the restrictions on "price" signs, the ordinance, as interpreted and applied below, is clearly arbitrary.

The New York Court of Appeals has upheld the ordinance as "designed to prevent fraud in the retail sale of gasoline." †† However, as the Supreme Court of Rhode Island observed in *State* v. *Guyette*, 81 R.I. 281, 102 A. 2d 446 (1954):

> "If the statute generally is to be supported on the theory that the public is entitled to be protected against fraud by requiring comparatively small signs on the pump to display the actual amount of the price of the fuel separately and apart from the tax, it is difficult

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* *Breard* v. *Alexandria*, 341 U.S. 622, 633 (1951).

** *Treigle* v. *Acme Homestead Association*, 297 U.S. 189, 197 (1936).

† *Ibid.*

†† *People* v. *Arlen Service Stations, Inc.*, 284 N.Y. 340, 343 (1940).

to see why a similar and larger sign elsewhere on the premises would not be at least as helpful in achieving the purpose of the statute" (81 R.I. at page 284, 102 A. 2d at page 450).

Again in *Gambone* v. *Commonwealth*, 375 Pa. 547, 101 A. 2d 634 (1954), the Supreme Court of Pennsylvania stated:

"Defendants state that the object is to prevent fraud and deception, it being claimed that some dealers endeavor to attract passing motorists by misleading advertisements calculated to make them believe that the gasoline was being sold at a lower price than was actually the case. It is quite impossible, however, to see how the size of the sign would have any relevancy to the perpetration of such fraud; on the contrary, it would seem that the larger the sign the more difficult it would be for the dealer to deceive the purchaser" (375 Pa. at page 552, 101 A. 2d at page 637).

In *City of Lake Charles* v. *Hasha*, 238 La. 635, 116 So. 2d 277 (1959), the Supreme Court of Louisiana struck down an ordinance similar to that here at issue, stating:

"Obviously, on its face it is designed to restrict competition and foster monopolistic practices, and is not a legitimate exercise of the police power" (238 La. at page 646, 116 So. 2d at page 280).

Again in *Town of Miami Springs* v. *Scoville*, 81 So. 2d 188 (Fla. 1955), the Supreme Court of Florida adopted the following language from the opinion of the lower court:

". . . the definite weight of authority, and the modern thought on the question, holds that the legislative re-

strictions of the kind involved here, particularly where it injures a party on a competitive basis, represent unconstitutional restraints on use and enjoyment of one's business and property, and a taking of property without due process of law, in violation of State and Federal constitutional guarantees" (81 So. 2d at page 193).

In the terse language of the Supreme Court of Michigan "The ordinance bears no reasonable relation whatsoever to public peace, health, morals, welfare or safety." *

In most of the cases discussed above the issue involved was whether independent dealers whose prices were lower than those of dealers selling nationally advertised brands had the right to maintain appropriately placed "price" signs of a sufficient size to be read by passing motorists. The decision here striking down appellant's right to employ its trade and brand name which neither directly nor indirectly states a "price," ** raises an entirely new area of governmental control potentially more crippling to independent dealers than anything which has come before. Henceforth, not only the display of "price" signs but also of legitimate trade and brand names, embodying substantial good will, will be subject to restriction simply because they contain such words as "save," "thrift" or "economy." †

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* *Levy* v. *City of Pontiac*, 331 Mich. 100, 49 N.W.2d 80, 83 (1951).

** For examples of indirect reference to price see *People* v. *25 Stations, Inc.*, 3 N.Y. 2d 488 (1957) where the number "25" indicated price and *People* v. *SAV-4-On-Gallon, Inc.*, 204 Misc. 708 (Magistrate's Court, Queens Co. 1953) where the price charged was 4¢ less than the prevailing per gallon price.

† Under the decision below, Economy Stores would be prohibited from using its name in connection with a gasoline station. Similarly, the well known department store Macy's could not use its slogan "It's smart to be thrifty" in connection with a gasoline station operation.

The ordinance as interpreted below—crippling as it does appellant's competitive position by making it a crime for appellant to use its trade name, employed without hindrance over the years to build good will—is arbitrary and oppressive having no relationship to any proper objective of the police power. Nor does the impairment of appellant's business serve any public purpose although it may serve the private interests of those who seek to use their size and power to destroy effective competition.

We believe the holding below constitutes an unconstitutional deprivation of appellant's rights without due process of law, that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

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APPENDIX A

Opinion of Magistrate James E. LoPiccolo delivered in open court on April 28, 1960:

The decision is this—incidentally, I tell you, gentlemen, I wrote this some days ago. I thanked the attorneys for the respective parties for their briefs which were received and helped the Court in arriving at the decision. This Court relies on the strong presumption of the constitutionality of the statute involved, in this case. It does not seriously concern itself with the issue, that issue particularly, as the law does not appear to be unreasonable or arbitrary. Defendant's contention that the alleged valuable good will would be destroyed by the People if the People were successful in the prosecution and therefore would be entitled to immunity from the statute does not impress this Court. The defendant's use of the word or the name "Save Way" and operated as such for a period of years without any apparent resistance or disapproval of the authority has no merit in the determination of this Court as it finds that the law has been in fact violated. From the testimony adduced at the trial, it is the Court's considered opinion that the defendant's use of "Save Way" does in fact leave the average person to the conclusion that "Save Way" refers to the price of gasoline which is offered for sale and therefore finds the defendant guilty (fols. 183-186).

APPENDIX B

Memorandum opinion of the Court of Special Sessions, Appellate Part, rendered on March 10, 1961:

MEMORANDUM

In this appeal from a conviction of the defendant corporation of a violation of Sec. B36-103.0 of the Administrative Code of the City of New York, both sides concede that the statute is constitutional. The only question is whether the signs in question violate the statute.

We are of the opinion that the case of *People* v. *25 Stations Inc.*, 3 N. Y. 2nd 488 is controlling in this case and the magistrate could find from the photographic exhibits and the evidence that the sign constituted a violation of the Administrative Code (fols. 203-204).

APPENDIX C

Memorandum of the Court of Appeals.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, v. SAVE WAY NORTHERN BLVD., INC., APPELLANT

Argued May 17, 1961; decided June 9, 1961.

APPEAL, by permission of an Associate Judge of the Court of Appeals, from a judgment of the Court of Special Sessions of the City of New York, Appellate Part, in the Second Judicial Department, entered March 10, 1961, affirming a judgment of the City Magistrates' Court of the City of New York, Borough of Queens (JAMES E. LOPICCOLO, M.), convicting defendant of a violation of section B36-103.0 of the Administrative Code of the City of New York. The complaint charged that defendant violated that section of the Administrative Code on February 2, 1960 in that defendant, at its gasoline service station at 39-04 Northern Boulevard in the Borough of Queens, displayed a sign more than 12 inches high and 12 inches wide with the legend "SAVE WAY" thereon, thereby referring directly or indirectly to the price of gasoline sold. Section B36-103.0 of the Administrative Code provided that it should be unlawful to sell gasoline unless the seller posted on the pump a sign not more than 12 inches high nor 12 inches wide stating the selling price per gallon, and that (subd. c) "No sign or placard stating or referring directly or indirectly to the price or prices of gasoline other than such signs or placards * * * shall be posted or maintained on, at, near or about the premises on which said gasoline is sold or offered for sale." Defendant's sign displayed the word "SAVE" printed in large letters in a horizontal position and the word "WAY" printed in a vertical position. Defen-

dant's full corporate name was not used. In the Court of Appeals defendant argued that the use of its trade name "SAVE WAY" did not refer directly or indirectly to price and that to apply the ordinance to prevent defendant from using its legitimate trade and brand name violated the due process and equal protection clauses of the Federal and State Constitutions.

Harold H. Levin and *Larry M. Lavinsky* for appellant.

Leo A. Larkin, Corporation Counsel (Beatrice Shainswit and *Seymour B. Quel* of counsel), for respondent.

Judgment affirmed upon the authority of *People* v. *25 Stations* (3 N Y 2d 488). No opinion.

Concur: Chief Judge DESMOND and Judges DYE, FROESSEL, VAN VOORHIS, BURKE and FOSTER. Judge FULD dissents and votes to reverse and to dismiss the complaint upon the ground that the defendant's signs, bearing the trade name "SAVE WAY", do not state or refer directly or indirectly to price within the sense or meaning of the Administrative Code provisions upon which the prosecution and conviction are based.

APPENDIX D

Order and Judgment of the Court of Appeals of the State of New York in The People of the State of New York v. Save Way Northern Blvd., Inc.

No. 156

THE PEOPLE, &c.,

Respondent,

vs.,

SAVE WAY NORTHERN BLVD., INC.,

Appellant.

BE IT REMEMBERED, that on the 27th day of April, in the year of our Lord one Thousand nine hundred and sixty one, Save Way Northern Blvd., Inc., the appellant in this cause came here unto the Court of Appeals by Proskauer Rose Goetz & Mendelsohn, its attorneys, and filed in said Court a Notice of Appeal and return thereto from the judgment of the Court of Special Sessions of the City of New York. And the People, &c., the respondent in said cause, afterwards appeared in said Court of Appeals by Charles H. Tenney, Corporation Counsel of the City of New York.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, the said Court of Appeals having heard this cause argued by Mr. Harold H. Levin, of counsel for the appellant, and by Beatrice Shainswit, of counsel for the respondent, and after due deliberation had thereon, did

order and adjudge that the judgment appealed from herein be and the same hereby is affirmed upon the authority of *People* v. *25 Stations,* 3 N Y 2d 488. And thereafter a motion to amend the remittitur having been granted this remittitur is hereby amended by adding thereto the following: Upon the appeal herein there was presented, and necessarily passed upon a question under the Constitution of the United States, viz.: Whether Section B 36-103.0 of the Administrative Code of the City of New York as applied to appellant in this case effects a deprivation of due process and equal protection, in violation of the Fourteenth Amendment of the Constitution of the United States. The Court of Appeals held that appellant's constitutional rights were not violated.

And it was also further ordered, that the record aforesaid and the proceedings in this Court be remitted to the Court of Special Sessions of the City of New York, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed, &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Court of Special Sessions of the City of New York, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Court of Special Sessions before the Justices thereof, &c.

(S) Raymond J. Cannon
Clerk of the Court of Appeals
of the State of New York

Appendix D

Court of Appeals, Clerk's Office)
:
Albany, June 9, 1961.)

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

(S) RAYMOND J. CANNON
Clerk